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DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, and
THE STATE OF OREGON, DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiffs,

v.

MARTIN MARIETTA CORPORATION and
COMMONWEALTH ALUMINUM
CORPORATION,

Defendants.

CIVIL ACTION NO. 89-714-MA

Microfilm No. **901232**

FILED WASCO CTY
THE DALLES, OR.

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KAREN R. LEBRETON
COUNTY CLERK

STATE OF OREGON,
County of Wasco, ss

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CONSENT DECREE

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3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT OF OREGON

5 UNITED STATES OF AMERICA and)
6 THE STATE OF OREGON, DEPARTMENT)
7 OF ENVIRONMENTAL QUALITY)
8 Plaintiffs,)
9 v.)
10 MARTIN MARIETTA CORPORATION,)
11 COMMONWEALTH ALUMINUM CORPORATION,)
12 Defendants.)

13 CONSENT DECREE

14 I.

15 BACKGROUND

16 The United States Environmental Protection Agency
17 (U.S. EPA), pursuant to Section 105 of the Comprehensive
18 Environmental Response, Compensation, and Liability Act of 1980
19 (CERCLA), 42 U.S.C. § 9605, placed the Martin Marietta Reduction
20 Facility, The Dalles, Wasco County, Oregon (the "Facility," as
21 specifically defined in Paragraph IV(C) of the Consent Decree)
22 on the National Priorities List;

23 In response to a release or a substantial threat of a
24 release of a hazardous substance at or from the Facility, the
25 U.S. EPA entered into a consent order with the Martin Marietta
26 Corporation in September 1985. Pursuant to said consent order

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1 the Martin Marietta Corporation was directed to commence and
2 perform a Remedial Investigation/Feasibility Study (RI/FS)
3 pursuant to 40 C.F.R. § 300.68 for the Facility;

4 The Martin Marietta Corporation completed a Remedial
5 Investigation (RI) and completed a Feasibility Study (FS) Report
6 in July of 1988; The FS Report contains a proposed plan for
7 remedial action at the Facility;

8 On or about July 14, 1988, U.S. EPA, pursuant to
9 Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the
10 completion of the RI/FS and of the proposed plan for remedial
11 action and provided opportunity for public comment to be
12 submitted in writing to U.S. EPA by August 17, 1988 or orally at
13 a public meeting held in the City of The Dalles, Wasco County,
14 Oregon on July 18, 1988;

15 U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C.
16 § 9617, has kept a transcript of the public meeting and has made
17 this transcript available to be public;

18 On November 28, 1988, U.S. EPA, pursuant to Section
19 122 of CERCLA, 42 U.S.C. § 9622, notified the Martin Marietta
20 Corporation that the U.S. EPA determined it to be a potentially
21 responsible party (PRP) regarding the proposed remedial action
22 at the Facility;

23 On January 16, 1989, U.S. EPA, pursuant to Section 122
24 of CERCLA, 42 U.S.C. § 9622, notified the Commonwealth Aluminum
25 Corporation that the U.S. EPA determined it to be a potentially
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1 responsible party (PRP) regarding the proposed remedial action
2 at the Facility;

3 In accordance with Section 121(f)(1)(F) of CERCLA,
4 42 U.S.C. § 9621(f)(1)(F), U.S. EPA notified the State of Oregon
5 ("the State") of negotiations with PRPs regarding the scope of
6 the remedial design and remedial action for the Facility, and
7 U.S. EPA has provided the State with an opportunity to
8 participate in such negotiations and be a party to any
9 settlement. The State, by and through the Oregon Department of
10 Environmental Quality, pursuant to ORS 466.550(2), is a party to
11 this action and this Consent Decree;

12 Pursuant to Section 122(j) of CERCLA, 42 U.S.C.
13 § 9622(j), U.S. EPA notified the Federal Natural Resource
14 Trustee of negotiations with PRPs on the subject of addressing
15 the release or threatened release of hazardous substances at the
16 Facility, and U.S. EPA has encouraged the participation of the
17 Federal Natural Resource Trustee in such negotiations;

18 Certain persons have provided comments on U.S. EPA's
19 proposed plan for remedial action, and to such comments U.S. EPA
20 provided a summary of responses;

21 After considering the proposed plan for remedial
22 action and the public comments received, U.S. EPA has reached a
23 decision on a final remedial action plan, and the defendants
24 signature to this Consent Decree ("Settling Defendants," as
25 defined in Paragraph IV(L) of this Consent Decree) are in
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1 agreement with such plan;

2 U.S. EPA's decision on the final remedial action plan
3 is embodied in a document called a Record of Decision (ROD),
4 dated September 29, 1988, to which the State of Oregon has given
5 its concurrence, and which includes a discussion of U.S. EPA's
6 reasons for the final plan, a response to each of the
7 significant comments, criticisms and new data submitted during
8 the public comment period for this Consent Decree, and any
9 significant changes (and the reasons for such changes) in the
10 proposed remedial action plan;

11 U.S. EPA, pursuant to Section 117(b) of CERCLA, 42
12 U.S.C. § 6917(b), has provided notice of adoption of the final
13 remedial action plan embodied in the form of the ROD, including
14 notice of the ROD's availability to the public for review at
15 U.S. EPA offices and local community repositories located at
16 Wasco County Library in The Dalles, Oregon;

17 Pursuant to Section 117(d), the notice was published
18 in a major local newspaper of general circulation and the notice
19 includes an explanation of any significant changes and the
20 reasons for such changes from the proposed remedial action
21 contained in the FS;

22 Pursuant to Section 121(d)(1), U.S. EPA, the State,
23 and Settling Defendants ("the Parties") believe that the
24 remedial action plan adopted by U.S. EPA will attain a degree of
25 cleanup of hazardous substances, pollutants and contaminants
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1 released into the environment and of control of further release
2 which at a minimum assures protection of human health and the
3 environment at the Facility;

4 The Parties believe the remedial action plan adopted
5 by U.S. EPA will provide a level or standard of control for such
6 hazardous substances, pollutants, or contaminants which at least
7 attains legally applicable or relevant and appropriate
8 standards, requirements, criteria, or limitations under federal
9 environmental law or state environmental or facility siting
10 laws, in accordance with Section 121 of CERCLA, 42 U.S.C.
11 § 6921, and with the National Contingency Plan ("NCP"), 40
12 C.F.R. Part 300;

13 Settling Defendants agree to implement the final
14 remedial action plan adopted by U.S. EPA in the ROD as set forth
15 in Appendix 1 to this Consent Decree, and U.S. EPA has
16 determined that the work required under the Consent Decree will
17 be done properly by Settling Defendants, and that Settling
18 Defendants are qualified to implement the remedial action plan
19 contained in the ROD; and

20 The Parties recognize, and intend to further hereby,
21 the public interest in the expeditious remediation of the
22 Facility and the avoidance of prolonged and complicated
23 litigation between the Parties;

24 NOW, THEREFORE, it is hereby Ordered, Adjudged and
25 Decreed:

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II.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that Party to it. Settling Defendants shall provide a copy of this Consent Decree to the contractor hired to perform the work required by this Consent Decree and shall require the contractor to provide a copy thereof to any subcontractor retained to perform any part of the work required by this Consent Decree.

IV.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the Exhibits and Appendix attached hereto, the following definitions specified in this Paragraph shall apply:

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1 A. "Architect" or "Engineer" means the company
2 or companies retained by the Settling Defendants to prepare the
3 construction plans and specifications necessary to accomplish
4 the remedial action described in the ROD and Scope of Work which
5 is attached to this Consent Decree as Appendix 2.

6 B. "Contractor" means the company or companies
7 retained on behalf of Settling Defendants to undertake and
8 complete the work required by this Consent Decree. Each
9 contractor and subcontractor shall be qualified to do those
10 portions of the work for which it is retained.

11 C. "Facility" means the "facility" as that term
12 is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9),
13 where disposal of hazardous substances was conducted by Martin
14 Marietta Corporation, which facility is located in The Dalles,
15 Wasco County, Oregon as shown on the map attached hereto as
16 Appendix 3.

17 D. "Future liability" refers to liability
18 arising after U.S. EPA's Certification of Completion is issued
19 pursuant to Paragraph XXVI(B) of this Consent Decree.

20 E. "Hazardous substance" shall have the meaning
21 provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)d.

22 F. "National Contingency Plan" shall be used as
23 that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.

24 G. "Parties" means the United States of
25 America, the State of Oregon, and the Settling Defendants.
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1 H. "Plaintiffs" means the United States of
2 America, its agencies and departments, and the State of Oregon,
3 by and through its Department of Environmental Quality.

4 I. "Response Costs" mean any costs incurred by
5 Plaintiffs pursuant to 42 U.S.C. § 9601 et seq.

6 J. "Scope of Work" or "SOW" means the scope of
7 work for implementation of the remedial design, remedial action,
8 and operation and maintenance of the remedial action at the
9 Facility, as set forth in Appendix 2 of this Consent Decree.

10 K. "Settling Defendants" means the Martin
11 Marietta Corporation and Commonwealth Aluminum Corporation.

12 L. "State" means the State of Oregon by and
13 through the Oregon Department of Environmental Quality.

14 M. "United States" means the United States of
15 America.

16 N. "U.S. EPA" means the United States
17 Environmental Protection Agency.

18 O. "U.S. DOJ" means the United States
19 Department of Justice.

20 P. "Waste Material" means any hazardous
21 substance, as defined by 42 U.S.C. § 9601(14) and any associated
22 contaminated material, pollutant or contaminant as defined by 42
23 U.S.C. § 9601(33).

24 Q. "Work" means the design, construction and
25 implementation, in accordance with Paragraphs VI and VII of this
26

1 Consent Decree, of the tasks described in the Scope of Work
2 (including operation and maintenance) and any schedules or plans
3 required to be submitted pursuant thereto.

4 V.

5 GENERAL PROVISIONS

6 A. Commitment of Plaintiffs and Settling Defendants:

7 1. Settling Defendants agree to finance and
8 perform the Work as defined in Paragraph IV(Q) of this Consent
9 Decree.

10 2. The Work as defined in Paragraph IV(Q) shall
11 be completed in accordance with the standards, specifications
12 and the time periods set forth in Paragraph VI and in the SOW.

13 B. Permits and Approvals:

14 1. All activities undertaken by the Settling
15 Defendants pursuant to this Consent Decree shall be undertaken
16 in accordance with the requirements of all applicable local,
17 state and federal laws and regulations, and comply with permit
18 conditions. The United States and the State have determined
19 that the obligations and procedures authorized under this
20 Consent Decree are consistent with the authority of the United
21 States and the State under under CERCLA and the NCP in
22 accordance with CERCLA § 121(e)(1) to establish appropriate
23 remedial measures for the Facility.

24 2. The United States and the State have
25 determined that no federal, state, or local permits are required
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1 for work conducted entirely on-site as described in the Scope of
2 Work. Settling Defendants shall obtain all permits or approvals
3 necessary for off-site work under federal, state or local laws
4 and shall submit timely applications and requests for any such
5 permits and approvals..

6 3. The standards and provisions of Paragraph
7 XII of this Consent Decree describing Force Majeure shall govern
8 delays in obtaining permits required for the Work and also the
9 denial of any such permits.

10 4. Settling Defendants shall incorporate the
11 terms of this Decree in all contracts or subcontracts entered
12 into for work required under this Decree, and shall require that
13 its contractors and subcontractors, agents and employees shall
14 perform all activities required by such contracts or
15 subcontracts in compliance with this Decree and all applicable
16 laws and regulations. This Consent Decree is not, nor shall it
17 act as, nor is it intended by the Parties to be, a permit issued
18 pursuant to any federal or state statute or regulation.

19 C. Conveyance of the Facility

20 1. Within thirty days of approval by the Court
21 of this Decree, Martin Marietta Corporation as a Settling
22 Defendant and owner of the Facility shall record a copy of this
23 Decree (without appendices) with the Recorder's Office, Wasco
24 County, State of Oregon.

25 2. The Facility as described herein may be
26
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1 freely alienated provided that at least sixty days prior to the
2 date of such alienation, the Owner Settling Defendant notifies
3 Plaintiffs of such proposed alienation, the name of the grantee,
4 and a description of the Owner Settling Defendant's obligations,
5 if any, to be performed by such grantee. In the event of such
6 alienation, all of Settling Defendants' obligations pursuant to
7 this Decree shall continue to be met by Settling Defendants or,
8 subject to U.S. EPA approval, by Settling Defendants and the
9 grantee.

10 3. Any deed, title or other instrument of
11 conveyance regarding the Facility shall contain a notice that
12 the Facility is the subject of this Consent Decree, setting
13 forth the style of the case, case number, and Court having
14 jurisdiction herein.

15 VI.

16 PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

17 A. All remedial design work to be performed by
18 Settling Defendants pursuant to this Consent Decree shall be
19 under the direction and supervision of a qualified professional
20 architect or engineer. Prior to the initiation of remedial
21 design work for the Facility, the Settling Defendants shall
22 notify U.S. EPA and the State, in writing, of the name, title,
23 and qualifications of any engineer or architect proposed to be
24 used in carrying out the remedial design work to be performed
25 pursuant to this Consent Decree. Selection of such architect or
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1 engineer by Settling Defendants shall be subject to approval by
2 U.S. EPA in consultation with the State.

3 B. All remedial action work to be performed by the
4 Settling Defendants pursuant to this Consent Decree shall be
5 under the direction and supervision of a qualified professional
6 engineer. Prior to the initiation of remedial action work at
7 the Facility, the Settling Defendants shall notify U.S. EPA and
8 the State, in writing, of the name, title, and qualifications of
9 the proposed engineer, and the names of principal contractors
10 and/or subcontractors proposed to be used in carrying out the
11 work to be performed pursuant to this Consent Decree. Selection
12 of any such engineer or contractor and/or subcontractor shall be
13 subject to approval by the U.S. EPA in consultation with the
14 State.

15 C. Appendix 2 to this Consent Decree provides a
16 Scope of Work (SOW) for the remedial design and remedial action
17 and is made an enforceable part of this Consent Decree.

18 D. The following work shall be performed:

19 1. Within 45 calendar days of the effective
20 date of lodging this Consent Decree, the Settling Defendants
21 shall submit a work plan to the U.S. EPA and a copy to the State
22 for the remedial design and remedial action at the Facility
23 (RD/RA Work Plan). The RD/RA Work Plan shall be developed in
24 conformance with the SOW, all applicable U.S. EPA Superfund
25 Remedial Design and Remedial Action Guidance and any additional
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1 guidance documents provided by U.S. EPA.

2 2. The RD/RA Work Plan submittal shall include,
3 but not be limited to, submittal of the following project plans:
4 (1) a sampling and analysis plan; (2) a health and
5 safety/contingency plan; (3) a plan for satisfaction of any
6 permitting requirements; (4) a quality assurance project plan;
7 (5) a groundwater monitoring plan; and (6) an operations and
8 maintenance plan. The RD/RA Work Plan shall also include a
9 schedule for implementation of the RD/RA tasks and submittal of
10 RD/RA reports.

11 3. The RD/RA Work Plan and other required
12 documents and reports (hereinafter referred to as "documents")
13 shall be subject to review and approval by U.S. EPA in
14 consultation with the State.

15 4. Within 45 calendar days of receipt of any
16 document, the U.S. EPA Remedial Project Manager shall notify
17 Settling Defendants, in writing, of approval or disapproval of
18 the document, or any part thereof. In the event that a longer
19 review period is required, the U.S. EPA Remedial Project Manager
20 shall notify Settling Defendants of that fact within 30 calendar
21 days of receipt of document. In the event of a disapproval,
22 U.S. EPA shall specify, in writing, any deficiencies and
23 required modifications to the document.

24 5. Within 30 calendar days of receipt of any
25 U.S. EPA document disapproval, the Settling Defendants shall
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1 submit a revised document to U.S. EPA and a copy to the State
2 which incorporates the U.S. EPA modifications or shall provide a
3 notice of dispute pursuant to Paragraph XIII.

4 6. Settling Defendants shall proceed to
5 implement the work detailed in the RD/RA Work Plan when the Work
6 Plan is fully approved by U.S. EPA in consultation with the
7 State. Unless otherwise directed by U.S. EPA, the Settling
8 Defendants shall not commence field activities until approval by
9 U.S. EPA of the RD/RA Work Plan. The fully approved RD/RA Work
10 Plan shall be deemed incorporated into and made an enforceable
11 part of this Consent Decree. All work shall be conducted in
12 accordance with the National Contingency Plan, the U.S. EPA
13 Superfund Remedial Design and Remedial Action Guidance, and the
14 requirements of this Consent Decree, including the standards,
15 specifications and schedule contained in the RD/RA Work Plan.

16 E. The Parties acknowledge and agree that neither
17 the SOW nor the RD/RA Work Plan constitutes a warranty or
18 representation of any kind by Plaintiffs that the SOW or RD/RA
19 Work Plan will achieve the performance goals and standards set
20 forth in the ROD and shall not foreclose Plaintiffs from seeking
21 performance of all terms and conditions of this Consent Decree,
22 including the applicable performance goals and standards.

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VII.

U.S. EPA PERIODIC REVIEW TO ASSURE

PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. Such review shall continue until Settling Defendants demonstrate that hazardous substances, pollutants or contaminants no longer remain at the Facility. If upon such review, U.S. EPA determines that further response action in accordance with Section 104 or 106 of CERCLA is appropriate at the Facility, then, consistent with Paragraph XVII of this Consent Decree, the U.S. EPA may take or require such action.

Upon completion of its review pursuant to this Paragraph, U.S. EPA shall notify Settling Defendants of its determination and may order additional response action pursuant to Section 106 of CERCLA to assure protection of human health and the Environment. Settling Defendants shall be provided with an opportunity to confer with U.S. EPA on any response action proposed as a result of U.S. EPA's 5-year review and to submit written comments for the record. After the period for submission of written comments is closed, the Regional

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1 Administrator of U.S. EPA, Region 10, shall in writing either
2 affirm, modify or rescind the order for further response
3 action. The final decision of U.S. EPA shall be subject to
4 judicial review pursuant to the dispute resolution provisions in
5 Paragraph XIII of this Consent Decree to the extent permitted by
6 Section 113 of CERCLA, 42 U.S.C. § 9613.

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8 VIII.

9 QUALITY ASSURANCE

10 Settling Defendants shall use quality assurance,
11 quality control, and chain of custody procedures in accordance
12 with U.S. EPA's "Interim Guidelines and Specifications For
13 Preparing Quality Assurance Project Plans," (QAM-005/80) U.S.
14 EPA's Data Quality Objective Guidance (EPA 540-687/003) and
15 subsequent amendments to such guidelines. Prior to the
16 commencement of any monitoring project under this Consent
17 Decree, Settling Defendants shall submit a Quality Assurance
18 Project Plan (QAPP) to U.S. EPA that is consistent with
19 applicable guidelines. U.S. EPA, after review of Settling
20 Defendants' QAPP, will notify Settling Defendants of any
21 required modifications, conditional approval, disapproval, or
22 approval of the QAPP. In any dispute arising hereunder between
23 U.S. EPA and the Settling Defendants, the Parties agree to
24 proceed pursuant to the dispute resolution provisions of
25 Paragraph XIII of this Decree. Settling Defendants shall assure
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1 that U.S. EPA personnel or authorized representatives are
2 allowed access to any laboratory utilized by Settling Defendants
3 in implementing this Consent Decree. In addition, Settling
4 Defendants shall have the designated laboratories analyze
5 samples submitted by U.S. EPA for quality assurance monitoring.
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7 IX.

8 FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

9 A. To the extent that the Facility or other areas
10 where Work is to be performed hereunder is currently owned by
11 persons other than those bound by this Consent Decree, Settling
12 Defendants shall obtain access agreements from the present
13 owners in a timely fashion in accordance with the schedule set
14 forth in the Scope of Work for purposes of implementing the
15 requirements of this Decree. Such agreement shall provide
16 access for U.S. EPA, the State, and authorized representatives
17 of U.S. EPA and the State. If such access agreements are not
18 obtained within the time specified herein, Settling Defendants
19 shall so notify U.S. EPA in writing and copy the State.
20 Settling Defendants shall use their best efforts to otherwise
21 secure access to the Facility. U.S. EPA and the State shall have
22 access to facility property owned by Settling Defendants.

23 B. Settling Defendants shall make available to U.S.
24 EPA and the State the results of all sampling and/or tests or
25 other data generated by Settling Defendants with respect to the
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1 implementation of this Consent Decree, and shall submit these
2 results in progress reports as required in Paragraph X of this
3 Consent Decree.

4 C. At the request of U.S. EPA or the State, Settling
5 Defendants shall allow split or duplicate samples to be taken by
6 U.S. EPA, the State, and/or their authorized representatives, of
7 any samples collected by Settling Defendants pursuant to the
8 implementation of this Consent Decree. Settling Defendants
9 shall notify U.S. EPA and the State not less than fourteen (14)
10 days in advance of any sample collection activity. In addition,
11 U.S. EPA and the State shall have the right to take any
12 additional samples that U.S. EPA or the State deem necessary.

13 X.

14 REPORTING REQUIREMENTS

15 A. Settling Defendants shall require the contractor
16 to prepare and provide to U.S. EPA and the State written
17 bi-monthly progress reports which: (1) describe the actions
18 which have been taken toward achieving compliance with this
19 Consent Decree during the previous period; (2) include all
20 results of sampling and tests and all other data received by
21 Settling Defendants pursuant to this Consent Decree during the
22 previous period; (3) include all plans and procedures completed
23 under the RD/RA Work Plan during the previous period; (4)
24 describe all actions and plans which are scheduled for the next
25 period and provide other information relating to the progress of
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1 construction as is customary in the industry; (5) include
2 information regarding percentage of completion, unresolved
3 delays encountered or anticipated that may affect the future
4 schedule for implementation of RD/RA Scope of Work or Work Plan,
5 and a description of efforts made to mitigate those delays or
6 anticipated delays. These progress reports are to be submitted
7 to U.S. EPA and the State within fifteen days after the end of
8 each bi-monthly period. The first bi-monthly reporting period
9 shall commence on the first day of the first calendar month
10 following the entry of this Consent Decree.

11 B. If the date for submission of any item or
12 notification required by this Consent Decree falls upon a
13 weekend or state or federal holiday, the time period for
14 submission of that item or notification is extended to the next
15 working day following the weekend or holiday.

16 C. Upon the occurrence of any event during
17 performance of the Work which, pursuant to Section 103 of
18 CERCLA, requires reporting to the National Response Center,
19 Settling Defendants shall give prompt oral notification to the
20 U.S. EPA Remedial Project Manager ("RPM"), or in the event of
21 the unavailability of the U.S. EPA RPM, the Emergency Response
22 Section, Region 10, United States Environmental Protection
23 Agency, in addition to the reporting required by Section 103.
24 Within 20 days of the onset of such an event, Settling
25 Defendants shall furnish to Plaintiffs a written report setting
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1 forth the events which occurred and the measures taken, and to
2 be taken, in response thereto. Within 30 days of the conclusion
3 of such an event, Settling Defendants shall submit a report
4 setting forth actions taken to respond thereto.

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6 XI.

7 REMEDIAL PROJECT MANAGER (RPM)/PROJECT COORDINATORS

8 A. U.S. EPA shall designate an RPM and the State
9 shall designate a Project Coordinator for the Facility. The RPM
10 or Project Coordinator may designate other representatives,
11 including U.S. EPA and State employees, and federal and state
12 contractors and consultants to observe and monitor the progress
13 of any activity undertaken pursuant to this Consent Decree. The
14 RPM shall have the authority lawfully vested in a RPM or an
15 On-Scene Coordinator (OSC) by the National Contingency Plan, 40
16 CFR Part 300. In addition, the RPM shall have authority to
17 halt, conduct, or direct any work required by this Consent
18 Decree and to take any necessary response action when conditions
19 at the Facility may present an imminent and substantial
20 endangerment to public health or welfare or the environment.
21 Settling Defendants shall also designate a Project Coordinator
22 who shall have primary responsibility for implementation of the
23 Work at the Facility.

24 B. To the maximum extent possible except as
25 specifically provided in the Consent Decree, communications
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1 between Settling Defendants, the State, and U.S. EPA concerning
2 the terms and condition of this Consent Decree shall be made
3 between the Project Coordinators and the RPM.

4 C. Within twenty (20) calendar days of the effective
5 date of this Consent Decree, Settling Defendants, the State, and
6 U.S. EPA shall notify each other, in writing, of the name,
7 address and telephone number of the designated Project
8 Coordinator and an Alternate Project Coordinator or RPM and
9 Alternate RPM.

10 XII.

11 FORCE MAJEURE

12 A. "Force Majeure" for purposes of this Consent
13 Decree is defined as any event arising, despite due diligence of
14 Settling Defendants, from causes entirely beyond the control of
15 Settling Defendants which event delays or prevents the
16 performance of any obligation under this Consent Decree. "Force
17 Majeure" shall not include changed financial conditions or
18 circumstances of either Settling Defendants; increased costs or
19 expenses or non-attainment of the Scope of Work.

20 B. When circumstances occur which may delay the
21 completion of any phase of the Work or delay access to the
22 Facility or to any property on which any part of the Work is to
23 be performed, whether or not caused by a "Force Majeure" event,
24 Settling Defendants shall promptly notify the RPM and the State
25 Project Coordinator by telephone, or in the event of their
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1 unavailability, the Director of the Waste Management Division of
2 U.S. EPA, Region 10. Within five (5) days of the event which
3 Settling Defendants contend is responsible for the delay,
4 Settling Defendants shall supply to Plaintiffs in writing the
5 reason(s) for and anticipated duration of such delay, the
6 measures taken or to be taken to mitigate the delay, and the
7 timetable for implementation of such measures. Failure to give
8 oral notice and written explanation to the RPM in a timely
9 manner shall constitute a waiver of any claim of force majeure.
10 The provision of this paragraph shall not be subject to dispute
11 resolution.

12 C. If U.S. EPA, after consultation with the State,
13 agrees that a delay is or was attributable to a "Force Majeure"
14 event, the U.S. EPA in consultation with the State shall modify
15 the RD/RA Work Plan to provide such additional time as may be
16 necessary to allow the completion of the specific phase of Work
17 and/or any succeeding phase of the Work affected by such delay,
18 with such additional time not to exceed the actual duration of
19 the delay.

20 D. If U.S. EPA and Settling Defendants cannot agree
21 whether the reason for the delay was a "Force Majeure" event,
22 whether the duration of the delay is or was warranted under the
23 circumstances, or whether the modification granted under
24 Subparagraph C of this Paragraph is sufficient, the U.S. EPA and
25 Settling Defendants shall resolve the dispute according to
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1 Paragraph XIII. Settling Defendants have the burden of proving
2 force majeure as a defense to compliance with this Consent
3 Decree.

4 XIII.

5 DISPUTE RESOLUTION

6 A. As required by Section 121(e)(2) of CERCLA, the
7 Parties to this Consent Decree shall attempt to resolve
8 expeditiously and informally any disagreements concerning
9 implementation of this Consent Decree or any Work required
10 hereunder.

11 B. In the event that any dispute arising under this
12 Consent Decree is not resolved expeditiously through informal
13 means, any party desiring dispute resolution under this
14 Paragraph shall give prompt written notice to the other Parties
15 to the Decree.

16 C. Within ten (10) days of the service of notice of
17 dispute pursuant to the Subparagraph B, the party who gave the
18 notice shall serve on the other Parties to this Decree a written
19 statement of the issues in dispute, the relevant facts upon
20 which the dispute is based, and factual data, analysis or
21 opinion supporting its position, and all supporting
22 documentation on which such Party relies (hereinafter the
23 "Statements of Position"). Opposing Parties shall serve their
24 Statements of Position, including supporting documentation, no
25 later than ten (10) days after receipt of the complaining
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1 Party's Statement of Position. In the event that these 10-day
2 time periods for exchange of Statements of Position may cause a
3 delay in the Work, they shall be shortened upon and in
4 accordance with notice by U.S. EPA.

5 D. An administrative record of any dispute under
6 this Paragraph shall be maintained by U.S. EPA. The record
7 shall be available for review by all Parties.

8 E. Upon review of the administrative record, the
9 Director of Waste Management Division, U.S. EPA, Region 10, in
10 consultation with the State, shall issue a final decision and
11 order resolving the dispute, which shall be followed by Settling
12 Defendants unless they file a Notice of Judicial Appeal as set
13 out in the following Subparagraph (Subparagraph F.). This Order
14 shall be enforceable administratively pursuant to Section
15 121(e)(2) of CERCLA, subject to the rights of judicial review
16 set forth in the following Subparagraph F.

17 F. Any decision and order of U.S. EPA pursuant to
18 the preceding Subparagraph E shall be reviewable by this Court,
19 provided that a Notice of Judicial Appeal is filed within 10
20 days of receipt of U.S. EPA's decision and order, until the date
21 of termination of this Consent Decree specified in Paragraph
22 XXVI of this Consent Decree. Thereafter, judicial review will
23 be available only by instituting new action(s) to the extent
24 permitted by law. The standard of judicial review shall be the
25 arbitrary and capricious standard for all disputes involving the
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1 selection of the remedy; provided that the standard of review
2 regarding other disputes, including but not limited to
3 compliance with Applicable or Relevant and Appropriate
4 Requirements, shall be determined by the Court, in accordance
5 with CERCLA.

6 G. The invocation of the procedures stated in this
7 Paragraph shall not extend or postpone Settling Defendants'
8 obligations under this Consent Decree with respect to the
9 disputed issue unless and until U.S. EPA finds, or the Court
10 orders, otherwise.

11 XIV.

12 RETENTION AND AVAILABILITY OF INFORMATION

13 A. Settling Defendants shall make available to U.S.
14 EPA and the State and shall retain, during the pendency of this
15 Consent Decree and for a period of six (6) years after its
16 termination, all records and documents in their possession,
17 custody, or control which relate to the performance of this
18 Consent Decree, including, but not limited to, documents
19 reflecting the results of any sampling, tests, or other data or
20 information generated or acquired by any of them, or on their
21 behalf, with respect to the Facility. After the six (6) year
22 period of document retention, Settling Defendants shall notify
23 U.S. DOJ and U.S. EPA and the State at least ninety (90)
24 calendar days prior to the destruction of any such documents,
25 and upon request by U.S. EPA or the State, Settling Defendants
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1 shall relinquish custody of the documents to U.S. EPA or the
2 State.

3 B. Settling Defendants may assert business
4 confidentiality claims covering part or all of the information
5 provided to U.S. EPA in connection with this Consent Decree in
6 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
7 § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b). Settling
8 Defendants may assert a trade secret claim of confidentiality
9 covering all or part of information provided to the State, in
10 accordance with OR. REV. STAT. 192.501(2).

11 C. Information provided to U.S. EPA under claim of
12 confidentiality and determined to be confidential by U.S. EPA
13 will be accorded the protection specified in 40 C.F.R. Part 2,
14 Subpart B. Information provided to the State and determined to
15 be confidential by the State will be accorded confidentiality in
16 accordance with OR. REV. STAT. 192.410 through 192.505. If no
17 such claim accompanies the information when it is submitted to
18 the U.S. EPA or the State, the public may be given access to
19 such information without further notice to Settling Defendants.

20 D. Information acquired or generated by Settling
21 Defendants in performance of the Work that is subject to the
22 provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §
23 9604(e)(7)(F), shall not be claimed as confidential by Settling
24 Defendants.

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XV.

REIMBURSEMENT

A. In addition to the sum of \$93,317.19 previously paid, Settling Defendants shall pay, within 45 days of the entry of this Consent Decree, \$268,982.01 to the EPA Hazardous Substances Response Trust Fund delivered to the U.S. EPA, Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania, 15251, in the form of a certified or cashier check payable to "EPA Hazardous Substances Superfund," and a copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region 10.

B. The payments made of \$362,299.20 under Subparagraph A of this Paragraph are in settlement of past response costs claimed by the United States in this Action. In consideration of the monies received under Subparagraph A of this Paragraph, the United States covenants not to sue Settling Defendants for any costs incurred prior to the signing date of this Consent Decree, pursuant to CERCLA, 42 U.S.C. § 9601 et seq.

C. Settling Defendants shall pay oversight costs of the United States and the State incurred after the signing of this Consent Decree in overseeing implementation of the Work. Payments shall be made within 30 days of the submission of itemized cost statements and supporting documentation by the United States and the State. The United States shall submit its oversight cost claims within 30 days of each anniversary date of

1 this Consent Decree. Payments to the United States shall be
2 made as specified in Subparagraph A of this Paragraph. Payments
3 to the State shall be made to the Hazardous Substance Remedial
4 Action Fund and delivered to the Manager, Business Office,
5 Department of Environmental Quality, 811 S.W. Sixth Avenue,
6 Portland, Oregon, 97204, by check payable to "Department of
7 Environmental Quality." Failure on the part of the United
8 States or the State to submit timely its claim shall not act as
9 a waiver of said claim. In consideration of and upon payment by
10 the Settling Defendants as above stated, the United States and
11 the State covenant not to sue for any oversight costs incurred
12 in overseeing the Work.

13 If oversight costs are outstanding at the time the
14 United States and the State plan to terminate this Consent
15 Decree, Settling Defendants shall, within thirty (30) days of
16 the submission of an itemized cost statement and supporting
17 documentation by the United States, and before termination of
18 this Consent Decree, pay such oversight costs.

19 D. The Response Costs set forth in Subparagraph A of
20 this Paragraph are not inconsistent with the National
21 Contingency Plan.

22 XVI.

23 STIPULATED PENALTIES

24 A. Settling Defendants shall pay stipulated
25 penalties in the amounts set forth in Subparagraph H of this
26

27
28 CONSENT DECREE - Page 28

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1 Paragraph to the United States for failure to timely submit and
2 perform major and minor scope of work requirements in compliance
3 with schedules set forth in Paragraph VI and the Scope of Work
4 incorporated by reference in this Consent Decree, unless
5 U.S. EPA determines that such failure is excused under Paragraph
6 XII ("Force Majeure"). Compliance by Settling Defendants shall
7 include satisfactory completion of an activity under this
8 Consent Decree or a plan approved under this Consent Decree or
9 any matter under this Consent Decree in an acceptable manner and
10 within the specified time schedules in and approved under this
11 Consent Decree. Any modifications of the time for performance
12 pursuant to Paragraph XXIII ("Modifications") shall be in
13 writing.

14 B. All penalties begin to accrue on the day that
15 complete performance is due or a violation occurs, and continue
16 to accrue through the final day of correction of the
17 noncompliance. With respect to any violation under (1) of
18 Subparagraph H hereof, nothing herein shall prevent the
19 simultaneous accrual of separate penalties for separate
20 violations of this Consent Decree.

21 C. Following U.S. EPA's determination that Settling
22 Defendants have failed to comply with the requirements of this
23 Consent Decree, U.S. EPA shall give Settling Defendants written
24 notification of the same and describe the noncompliance. This
25 notice shall also indicate the amount of penalties due.
26

1 D. All penalties owed to the United States under
2 this Paragraph shall be payable within 30 days of receipt of the
3 notification of noncompliance, unless Settling Defendants invoke
4 the dispute resolution procedures under Paragraph XIII.
5 Penalties shall accrue from the date of violation regardless of
6 whether U.S. EPA has notified Settling Defendants of a
7 violation. Interest shall begin to accrue on the unpaid balance
8 at the end of the 30-day period. Such penalties shall be paid
9 by certified check to the "Hazardous Substances Response Trust
10 Fund" and shall contain Settling Defendants' complete and
11 correct address, the site name, and the civil action number.
12 All checks shall be mailed to U.S. EPA, Superfund, P.O. Box
13 371003M, Pittsburgh, Pennsylvania, 15251.

14 E. Neither the filing of a petition to resolve a
15 dispute nor the payment of penalties shall alter in any way
16 Settling Defendants' obligation to complete the performance
17 required hereunder.

18 F. Settling Defendants may dispute U.S. EPA's right
19 to the stated amount of penalties by invoking the dispute
20 resolution procedures under Paragraph XIII. Penalties shall
21 accrue but need not be paid during the dispute resolution
22 period. If the District Court becomes involved in the
23 resolution of the dispute, the period of dispute shall end upon
24 the rendering of a decision by the District Court regardless of
25 whether any Party appeals such decision. If Settling Defendants
26

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28 CONSENT DECREE - Page 30

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1 do not prevail upon resolution, Plaintiffs have the right to
2 collect all penalties which accrue prior to and during the
3 period of dispute. In the event of an appeal, such penalties
4 shall be placed into an escrow account until a decision has been
5 rendered by the Court of the final appeal. If Settling
6 Defendants prevail upon resolution, no penalties shall be
7 payable.

8 G. No penalties shall accrue for violations of this
9 Consent Decree caused by events determined by U.S. EPA to be
10 beyond the control of Settling Defendants as identified in
11 Paragraph XII ("Force Majeure"). Settling Defendants have the
12 burden of proving force majeure as a defense to compliance with
13 this Consent Decree.

14 H. The following stipulated penalties shall be
15 payable per violation to the United States for any noncompliance
16 identified in Subparagraph A above:

17 (1) For minor scope of work violations defined
18 as Work Plan Development, Work Plan Revisions, Start Remedial
19 Design, and Bi-monthly:

<u>Amount/Week</u>	<u>Period of Noncompliance</u>
\$ 0	1 to 7 days
\$ 2,000	per each subsequent 7-day period or part thereof

24 (2) For major scope of work violations (defined as
25 Final Remedial Design, Start Remedial Action, and Completion of
26 Remedial Action):

27
28 CONSENT DECREE - Page 31

	<u>Amount/Day</u>	<u>Period of Noncompliance</u>
1		
2	\$ 1,000	1st through 7th day
3	\$ 2,500	8th through 14th day
4	\$ 5,000	15th through 30th day
5	\$10,000	31 day and beyond

I. No payments made under this Paragraph shall be tax deductible.

J. This Paragraph shall remain in full force and effect for the term of this Consent Decree.

K. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed every 30 days during the period of non-payment of any amount(s) due under this Decree. A six percent (6%) per annum penalty charge will be assessed if the penalty is not paid within 90 days of the due days.

L. If Settling Defendants fail to pay stipulated penalties, Plaintiffs may institute proceedings to collect the penalties. Notwithstanding the stipulated penalties provisions of this Paragraph, U.S. EPA may elect to assess civil penalties and or bring an action in U.S. District Court pursuant to Section 109 of CERCLA as amended by SARA, to enforce the provisions of this Consent Decree provided that Settling Defendants' total penalty exposure for violations shall be limited to \$25,000 per day per violation of this Consent Decree. Payment of stipulated penalties shall not preclude U.S.

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1 EPA or the State from electing to pursue any other remedy or
2 sanction to enforce this Consent Decree, and nothing in this
3 Consent Decree shall preclude U.S. EPA from seeking statutory
4 penalties against Settling Defendants for violations of
5 statutory or regulatory requirements.
6

7 XVII.

8 COVENANT NOT TO SUE

9 A. In consideration of actions which will be
10 performed and payments which will be made by the Settling
11 Defendants under the terms of this Consent Decree, and except as
12 otherwise specifically provided in this Decree, the United
13 States and the State covenant not to sue the Settling Defendants
14 or their officers, directors, employees, or agents for Covered
15 Matters. Covered Matters shall include any and all claims
16 available to the United States under Sections 106 and 107 of
17 CERCLA and Section 7003 of RCRA and common law nuisance and any
18 and all claims available to the State under CERCLA, RCRA, OR.
19 REV. STAT. Chapter 466, and common law, regarding hazardous
20 substances released at or from the facility as described in
21 Plaintiffs' complaint against the Settling Defendants. With
22 respect to future liability, this covenant not to sue shall take
23 effect upon certification by U.S. EPA, with concurrence of the
24 State, of the completion of the remedial action concerning the
25 Facility.
26

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28 CONSENT DECREE - Page 33

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1 B. "Covered Matters" does not include:

2 (1) Liability arising from hazardous substances
3 removed from the Facility;

4 (2) Natural Resource damages under CERCLA or OR.
5 REV. STAT. 466.567;

6 (3) Criminal liability;

7 (4) Claims based on a failure by the Settling
8 Defendants to meet the requirements of this
9 Consent Decree; and

10 (5) Liability for violations of Federal or State
11 law which occur during implementation of the
12 remedial action.

13 C. Notwithstanding any other provision in this
14 Consent Decree, (1) the United States and the State reserve the
15 right to institute proceedings in this action or in a new action
16 or to issue an Order seeking to compel the Settling Defendants
17 to perform any additional response work at the Facility
18 including that necessitated by a release from the Facility, and
19 (2) the United States and the State reserve the right to
20 institute proceedings in this action or in a new action seeking
21 to reimburse the United States and the State for their
22 respective response costs under CERCLA or State law, and to
23 reimburse the State for its matching share of any response
24 action undertaken by U.S. EPA (and/or the State) under CERCLA,
25 relating to the Facility, if:

26 a. for proceedings prior to U.S. EPA certification
27 of completion of the remedial action concerning
28

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1 the Facility,

2 (i) conditions at the Facility, previously unknown
3 to the United States or the State, are discovered
4 after the entry of this Consent Decree, or

5 (ii) information is received, in whole or in
6 part, after the entry of this Consent Decree, and
7 these previously unknown conditions or this
8 information indicates that the remedial action is
9 not protective of human health and the
10 environment; and

11 b. for proceedings subsequent to U.S. EPA
12 certification of completion of the remedial
13 action concerning the Facility,

14 (i) conditions at the Facility, previously
15 unknown to the United States or the State, are
16 discovered after the certification of completion
17 by U.S. EPA, or

18 (ii) information is received, in whole or in
19 part, after the certification of completion by
20 U.S. EPA, and these previously unknown conditions
21 or this information indicates that the remedial
22 action is not protective of human health and the
23 environment.

24 D. Notwithstanding any other provision in this
25 Consent Decree, the covenant not to sue in this Section shall
26

27
28 CONSENT DECREE - Page 35

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1 not relieve the Settling Defendants of their obligation to meet
2 and maintain compliance with the requirements set forth in this
3 Consent Decree, including the conditions in the ROD, which are
4 incorporated herein, and the United States and the State reserve
5 their rights to take response actions at the Facility in the
6 event of a breach of the terms of this Consent Decree and to
7 seek recovery of costs incurred after entry of the Consent
8 Decree: 1) resulting from such a breach; 2) relating to any
9 portion of the Work funded or performed by the United States or
10 the State; or 3) incurred by the United States or the State as a
11 result of having to seek judicial assistance to remedy
12 conditions at or adjacent to the Facility.

13 E. Nothing in this Consent Decree shall constitute
14 or be construed as a release or a covenant not to sue regarding
15 any claim or cause of action against any person, firm, trust,
16 joint venture, partnership, corporation or other entity not
17 signatory to this Consent Decree for any liability it may have
18 arising out of or relating to the Facility. Plaintiffs
19 expressly reserve the right to continue to sue any person other
20 than the Settling Defendants, in connection with the Facility.

21 F. The Settling Defendants and each of them covenant
22 not to sue the United States, including any and all departments,
23 agencies, officers, administrators, and representatives thereof,
24 for any claim, counter-claim, or cross-claim asserted, or that
25 could have been asserted, arising out of or relating to the
26

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28 CONSENT DECREE - Page 36

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1 Site, including but not limited to claims under Sections 106 and
2 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. This Covenant not to
3 sue also extends to any claim or potential claim related to or
4 arising out of the Work to be performed pursuant to this Decree,
5 except for any claim arising pursuant to the dispute resolution
6 provisions of Section XIII herein.

7
8 XVIII.

9 OTHER CLAIMS

10 A. Settling Defendants agree to indemnify, save and
11 hold harmless U.S. EPA, the State and/or their representatives
12 from any and all claims or causes of action arising from acts or
13 omissions of Settling Defendant and/or its representatives in
14 carrying out the activities pursuant to this Consent Decree.
15 U.S. EPA and the State shall notify Settling Defendants of any
16 such claims or actions within sixty (60) working days of
17 receiving notice that such a claim or action is anticipated or
18 has been filed. U.S. EPA and the State agree not to act with
19 respect to any such claim or action without first providing
20 Settling Defendant an opportunity to participate.

21 B. U.S. EPA and the State are not to be construed as
22 a Party to, and do not assume any liability for, any contract
23 entered by the Settling Defendants in connection with this
24 Consent Decree. The proper completion of the Work under this
25 Consent Decree is solely the responsibility of Settling
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27

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1 Defendants.

2 C. Settling Defendants waive their right to assert
3 any claims against the Hazardous Substances Trust Fund under
4 CERCLA that are related to any past costs or costs incurred in
5 the Work performed pursuant to this Consent Decree, and nothing
6 in this Consent Decree shall be construed as U.S. EPA's
7 preauthorization of a claim against the Hazardous Substance
8 Trust Fund.

9
10 XIX.

11 FINANCIAL RESPONSIBILITY

12 Settling Defendants shall protect and hold harmless
13 the United States, the State and the public against any and all
14 liability arising out of Settling Defendants' and its Contractor
15 and other agents' acts or omissions in performance of the Work
16 at the Facility. Prior to commencement of the Work at the
17 Facility, Martin Marietta Corporation shall provide U.S. EPA
18 with proof of financial assurance pursuant to 40 C.F.R.
19 § 264.151.

20
21 XX.

22 NOTICES

23 Whenever, under the terms of this Consent Decree,
24 notice is required to be given, a report or other document is
25 required to be forwarded by one Party to another, or service of
26

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28 CONSENT DECREE - Page 38

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1 any papers or process is necessitated by the dispute resolution
2 provisions of Paragraph XIII hereof, such correspondence shall
3 be directed to the following individuals at the addresses
4 specified below:

5
6 As to the United States or U.S. EPA:

7 Remedial Project Manager
8 Martin Marietta Site
9 U.S. Environmental Protection Agency
10 1200 Sixth Avenue (HW-113)
11 Seattle, Washington 98101

12 As to the State of Oregon

13 Project Coordinator
14 Martin Marietta Site
15 Oregon Department of Environmental Quality
16 811 S.W. Sixth Avenue
17 Portland, Oregon 97204

18 For Settling Defendant:

19 Jose R. Bou, Vice President
20 Martin Marietta Aluminum Properties
21 6801 Rockledge Drive, Mail Stop 381
22 Bethesda, Maryland 20817

23 XXI.
24 CONSISTENCY WITH
25 NATIONAL CONTINGENCY PLAN

26 The Parties agree that the Work, if properly performed
27 as set forth in Paragraph VI hereof, is consistent with the
28 provisions of the National Contingency Plan pursuant to 42
U.S.C. § 9605.

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XXII.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. § 9604, or to alter the applicable legal principles governing the judicial review of U.S. EPA's Record of Decision concerning remedial action at the Facility.

XXIII.

MODIFICATION

Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all Parties to this consent Decree.

XXIV.

PUBLIC PARTICIPATION

The United States shall publish a notice of this Consent Decree's availability for review and comment upon its lodging with the United States District Court as a proposed settlement in this matter.

The United States will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during at least a thirty 30 day period following such notice. In addition, the United States intends to hold an informal public meeting in The Dalles, Wasco County, Oregon during this period to receive either written or oral

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1 comments. The United States will file with the Court a copy of
2 any comments received and the responses of the United States to
3 such comments.

4 After the closing of the public comment period, the
5 United States will review such comments and determine whether
6 the comments disclose facts or considerations which indicate
7 that the proposed judgment is inappropriate, improper or
8 inadequate, and that the consent should therefore be withdrawn.
9 Should consent be withdrawn, the United States shall inform the
10 other Parties as to the basis for the withdrawal and any
11 modifications necessary for consent to a settlement.
12

13 XXV.

14 COMMUNITY RELATIONS

15 Settling Defendants shall cooperate with U.S. EPA and
16 the State in providing RD/RA information to the public. As
17 requested by U.S. EPA or the State, Settling Defendants shall
18 participate in the preparation of all appropriate information
19 disseminated to the public and in public meetings which may be
20 held or sponsored by U.S. EPA or the State to explain activities
21 at or concerning the Facility.
22

23 XXVI.

24 EFFECTIVE AND TERMINATION DATES

25 A. This Consent Decree shall be effective upon the
26
27

1 date of its entry by the Court.

2 B. When Settling Defendants determine that it has
3 completed the Work, they shall submit to U.S. EPA with a copy to
4 the State a Notice of Completion and a Final Report as required
5 by the RD/RA Work Plan final report must summarize to Work
6 performed, any modification to the RD/RA Work Plan, and the
7 performance levels achieved. The summary shall include or
8 reference any supporting documentation.

9 Upon receipt of the Notice of Completion, U.S. EPA in
10 consultation with the State shall review the accompanying report
11 and any other supporting documentation. Prior to the issuance
12 of a certification of completion, U.S. EPA in consultation with
13 the State shall also undertake a review of the remedial action
14 under Paragraph VII of this Consent Decree. U.S. EPA shall
15 issue a Certification of Completion upon its determination that
16 (1) Settling Defendants have satisfactorily completed the Work
17 and has achieved standards of performance required under this
18 Consent Decree; (2) no corrective action under Paragraph VII is
19 necessary; (3) all stipulated penalties required to be paid
20 under Paragraph XVI have been paid in full by Settling
21 Defendants; and (4) all costs payable to the U.S. EPA and the
22 State including oversights costs have been paid.

23 C. Upon U.S. EPA's issuance of a Certificate of
24 Completion, Settling Defendants may petition this Court to
25 terminate this Consent Decree. Plaintiffs shall have sixty (60)
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28 CONSENT DECREE - Page 42

1 days to respond to such petition. Settling Defendants' petition
2 shall recite the provisions of this Paragraph of this Decree.

3 By the Signatures below each Settling Defendants'
4 consent to this Decree is hereby given:

5
6 UNITED STATES OF AMERICA

7 By: Donald Carr
8 DONALD CARR
9 Acting Assistant Attorney
10 General
11 Land & Natural Resources
12 Division
13 U.S. Department of Justice
14 Washington, D. C. 20530

By: [Signature]

15 Date: 6-20-89

Date: 6-20-89

16 By: [Signature]
17 ROBBIE C. RUSSELL
18 Regional Administrator
19 U.S. EPA Region 10

20 Date: 4/6/89

21 STATE OF OREGON

22 By: [Signature]
23 FRED HANSEN
24 Director
25 Oregon Department of Environmental Quality

26 Date: 3-27-89

27
28 CONSENT DECREE - Page 43

SETTLING DEFENDANT'S SIGNATURE PAGE TO CONSENT DECREE

The undersigned Settling Defendants, Martin Marietta Corporation and Commonwealth Aluminum Corporation, hereby consent to the foregoing Consent Decree in the United States District Court for the District of Oregon captioned "United States of America and The State of Oregon, Department of Environmental Quality v. Martin Marietta Corporation, Commonwealth Aluminum Corporation."

MARTIN MARIETTA CORPORATION

By: 

Jose R. Bou

Date: 27 March 1989

COMMONWEALTH ALUMINUM CORPORATION,
by and through Martin Marietta Corporation,
its Attorney in Fact, pursuant to that one
certain Power of Attorney dated September 9, 1987.

By: 

Jose R. Bou

Date: 27 March 1989

CERTIFICATION

The undersigned, Jose R. Bou, hereby states that he is an employee of Martin Marietta Corporation and has been duly authorized and delegated the power to execute the foregoing Consents in behalf of each of the Settling Defendants pursuant to the Special Delegation of Authority dated 2 February 1989 (copy attached) and the Power of Attorney dated 9 September 1987 (copy attached).

Dated this 27th day of March 1989


Jose R. Bou

JUDGMENT

1 The foregoing Consent Decree having been read and
2 considered, and the Court having also considered any comments
3 thereon submitted in response to the public notice under 28
4 C.F.R. § 50.7 and 42 U.S.C. § 9622(i), the Consent Decree
5 lodged with the Court on July 5, 1989 is hereby ENTERED
6 according to its terms.
7

8 DATE: _____

Malcolm J. Marsh
United States District Judge

MARTIN MARIETTA CORPORATION

DAVID C. DRESSLER
SENIOR VICE PRESIDENT

6801 ROCKLEDGE DRIVE
BETHESDA, MARYLAND 20817
TELEPHONE (301) 897-5801

February 2, 1989

Mr. Jose R. Bou, Vice President
Martin Marietta Aluminum Properties, Inc.
6801 Rockledge Drive
Bethesda, MD 20817

RE: Special Delegation of Authority

Dear Jose:

Pursuant to the Authority vested in me as Senior Vice President of Martin Marietta Corporation, you are authorized, as an employee of Martin Marietta Corporation and in your capacity as Vice President of Martin Marietta Aluminum Properties, Inc., and delegated the authority to make and execute a Proposal to the EPA in behalf of Martin Marietta Corporation and Commonwealth Aluminum Corporation in response to the Special Notice Letters sent by the EPA to Martin Marietta Corporation and Commonwealth Aluminum Corporation. This proposal is understood to be for the undertaking of the Remedial Design and Remedial Action (RD/RA) at the Martin Marietta site at The Dalles, Oregon. This Delegation of Authority specifically includes the authority to make the Proposal also in behalf of Commonwealth Aluminum Corporation (pursuant to the attached Power of Attorney to Martin Marietta Corporation) and to settle and compromise all past claims by the EPA for "Response Costs". You are further authorized to do all things deemed reasonably necessary or incidental by you in your judgment to timely effectuate a responsive good faith joint Proposal to the EPA for such work and to effectuate a Consent Decree to enable this undertaking. You are also specifically authorized to include a copy of this Authorization in the Proposal to the EPA.

Sincerely,

MARTIN MARIETTA CORPORATION

David C. Dressler
Senior Vice President

POWER OF ATTORNEY

Commonwealth Aluminum Corporation, formerly known as Martin Marietta Aluminum Inc. and as Harvey Aluminum (Incorporated), a corporation organized and existing under the laws of the State of California, with its principal office at 3 Bethesda Metro Center, Suite 1100, City of Bethesda, County of Montgomery, State of Maryland, hereby appoints Martin Marietta Corporation, a corporation organized and existing under the laws of the State of Maryland, with its principal office at 6801 Rockledge Drive, City of Bethesda, County of Montgomery, State of Maryland, as its attorney-in-fact for the following limited purposes:

1. In the name of Commonwealth Aluminum Corporation, to defend against, negotiate, settle, compromise or otherwise resolve any claims, demands or lawsuits which now or may hereafter exist, and which are subject to Section 3.18(a)(1)(A) and/or (B) of the Purchase Agreement among Comalco (U.S.) Holding, Inc., Comalco Limited and Martin Marietta Corporation, dated as of September 30, 1984, as amended, arising out of alleged environmental pollution at certain locations, namely:
 - A. Operating Industries, Inc., a dumpsite located in Monterey Park, California;
 - B. Stringfellow Acid Pits, a dumpsite located in Riverside County, California;
 - C. Yellow Water Road, a dumpsite located in Baldwin, Florida;
 - D. Seymour, a dumpsite located in Seymour, Indiana;
 - E. The former Harvey Aluminum/Martin Marietta Aluminum facility located in The Dalles, Oregon;
 - F. BKK, a dumpsite located in California;
 - G. Such other sites as may be agreed separately in writing between the parties;
- and to take such other steps in connection with any such claims, demands or lawsuits as it may deem necessary and proper, and in the name of Commonwealth Aluminum Corporation to execute and deliver any releases,

consent orders, or other satisfaction of any such claims, demands or lawsuits, with the same effect as if such documents were executed by an officer of Commonwealth Aluminum Corporation.

2. To exercise all insurance coverage rights held by Commonwealth Aluminum Corporation under insurance policies issued to Harvey Aluminum (Incorporated) and to Martin Marietta Corporation or its predecessors-in-interest, which provide coverage to Harvey Aluminum (Incorporated) and/or Martin Marietta Aluminum Inc. with respect to those claims, demands or lawsuits set forth in paragraph 1, above; and in the name of Commonwealth Aluminum Corporation to ask, demand, sue for, collect, and receive all sums of money or other obligations of any kind whatsoever which are now or shall hereafter become due, owing, or payable, or otherwise belong to Commonwealth Aluminum Corporation, with respect to those claims, demands or lawsuits set forth in paragraph 1; to settle and compromise any such debts or obligations that may be due Commonwealth Aluminum Corporation with respect to those claims, demands or lawsuits set forth in paragraph 1; and to take such other steps in connection with any such claims, demands or lawsuit which it may deem necessary and proper and in the name of Commonwealth Aluminum Corporation to execute and deliver any receipts, releases, or discharges of any such claims or obligations with the same effect as if such receipts, releases or discharges were executed by an officer of Commonwealth Aluminum Corporation.

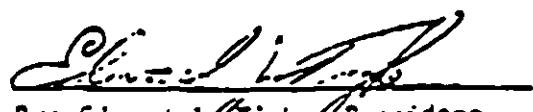
The authority of the attorney-in-fact to exercise any powers herein granted shall commence on SEPTEMBER 9, 1987, and shall remain in full force and effect until terminated by written notice.

Dated: SEPTEMBER 9, 1987

Attest:

COMMONWEALTH ALUMINUM CORPORATION


R. F. Johnson, Vice President


By: Edward J. Tighe, President

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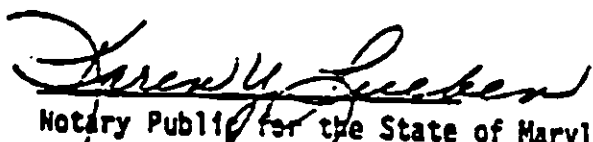
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State of Maryland)

SS:

County of Montgomery)

On this 9th day of September in the year 1987, before me, a notary public, personally appeared Edward S. Pejde, personally known to me to be the person who executed the within instrument as President of the corporation herein named, and acknowledged to me that it was the corporation's act and deed.


Notary Public for the State of Maryland
My Commission Expires July 1, 1990

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That HOMER SIMS

hereinafter called grantor,
for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto TAYLOR CATTLE COMPANY,
hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the
tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the Counties
of Crook, Jefferson*, State of Oregon, described as follows, to-wit:

*Wasco and Wheeler

See Exhibit "A" attached hereto and incorporated herein
by this reference.

(If space insufficient, continue description on reverse side)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The ~~actual consideration~~ ~~consists of or includes other property or value given or promised which is~~
the whole consideration (Indicate which by ~~the whole consideration~~ ~~consists of or includes other property or value given or promised which is~~
the whole consideration (Indicate which by ~~the whole consideration~~ ~~consists of or includes other property or value given or promised which is~~

In construing this deed and where the context so requires, the singular includes the plural and all grammatical
changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 21st day of March, 1990;
if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by
order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DE-
SCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND
USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING
THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE
PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR
COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

(If the signer of the above is a corporation,
use the form of acknowledgment opposite.)

(ORS 194.570)

STATE OF OREGON,

County of Linn

ss.

The foregoing instrument was acknowledged before
me this 21st day of March, 1990, by

HOMER SIMS

M. Frances Sullivan
Notary Public for Oregon

(SEAL)

My commission expires: May 18, 1990

STATE OF OREGON, County of) ss.

The foregoing instrument was acknowledged before me this

, 19, by

president, and by

secretary of

a corporation, on behalf of the corporation.

Notary Public for Oregon

My commission expires:

(SEAL)

(If executed by a corporation,
affix corporate seal)

HOMER SIMS

GRANTOR'S NAME AND ADDRESS

TAYLOR CATTLE COMPANY

GRANTEE'S NAME AND ADDRESS

After recording return to:

David R. Ludwig, Esq.
O'CONNELL, GOYAK & DILORENZO
121 S.W. Morrison St., Suite 800
Portland, Oregon 97204

Until a change is requested all tax statements shall be sent to the following address.

NAME, ADDRESS, ZIP

901233

Microfilm No.

COMPARED

FILED WASCO CTY
THE DALLES, OR.

MAR 29 11 35 AM '90

KAREN R. LEBRETON
COUNTY CLERK

INDEXED

STATE OF OREGON,
County of Wasco,I certify that this document was received and
recorded in the

DEED

Karen R. LeBreton, County Clerk

by *JB* DeputyReturn to *Return*

901233 (4)